

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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JLG  
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INDIANA UTILITY REGULATORY )  
COMMISSION PROCEEDING TO ESTABLISH )  
FUNDING FOR THE COSTS OF THE INDIANA )  
LIFELINE ASSISTANCE PROGRAM, )  
PURSUANT TO THE PROVISIONS SET )  
FORTH IN HEA 1279, CODIFIED AS )  
IC 8-1-36-8. )

CAUSE NO. 43082

FINAL ORDER

RESPONDENTS: )  
ALL TELECOMMUNICATIONS SERVICE )  
PROVIDERS, INCLUDING INTRASTATE )  
WIRELESS CARRIERS, IN THE STATE OF )  
INDIANA. )

APPROVED: NOV 07 2007

BY THE COMMISSION:

David E. Ziegner, Commissioner

Scott R. Storms, Chief Administrative Law Judge

The Indiana Utility Regulatory Commission ("Commission") initiated its review in this matter with an Order issued in this Cause on July 6, 2006. The purpose of this proceeding is to establish funding requirements for the Indiana Lifeline Assistance Program ("ILAP") as a result of statutory directives for Lifeline service contained in legislation passed in 2006 by the Indiana General Assembly under House Enrolled Act ("HEA") 1279.<sup>1</sup> HEA 1279 was signed into law by Governor Daniels on March 14, 2006. Section 59 of HEA 1279 added a new chapter to the Indiana Code, codified as Indiana Code (IC) § 8-1-36.

<sup>1</sup> In general, "Lifeline" service provides universal service support for qualifying low-income consumers whereby such consumers pay reduced charges in obtaining such support. "Universal service" as used here is essentially basic local telephone service – the ability to place a telephone call and to receive a telephone call at just, reasonable and affordable rates that are reasonably comparable between rural and urban areas. In the federal Telecommunications Act of 1996 ("TA-96"), Congress defined "universal service" as an "evolving level of telecommunications services that the [FCC] shall establish periodically . . . taking into account advances in telecommunications and information technologies and services." 47 U.S.C. § 254(c)(1) of TA-96.

In the Order of the Federal Communications Commission ("FCC"), addressing the universal service support provisions of TA-96, the FCC established regulations (47 C.F.R. § 54.101 et. seq.) that require all eligible telecommunications carriers ("ETCs"), receiving compensation from the federal Universal Service Fund for costs incurred in providing universal service, to make available Lifeline service to qualifying low-income consumers. See, *In Re: The Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 rel. May 8, 1997. The FCC's subsequent rules, implementing the provisions of TA-96, define Lifeline service and identify the services or functionalities provided. See, 47 C.F.R. § 54.401(a).

Pursuant to the provisions set forth in IC § 8-1-36-8(b), the Commission is required to determine funding requirements for the following costs of the ILAP, after notice and hearing, in a manner based on and consistent with comparable federal funding mechanisms for the federal Lifeline program:

- (1) The costs of reimbursing ETCs for lost revenues associated with providing further reduced charges for Lifeline support.
- (2) Reasonable expenses incurred by the Commission and ETCs to:
  - (A) Administer the program; and
  - (B) Publicize the availability of the program in a manner reasonably designed to reach eligible customers.

Ind. Code § 8-1-36-8(b).

Pursuant to proper notice as required by law and provided for in 170 IAC 1-1.1-15, a Prehearing Conference was held on August 16, 2006, at 9:30 a.m. EDT, in Conference Center Room 32 of the Indiana Government Center South, Indianapolis, Indiana. Eligible Telecommunications Carriers ("ETCs") subject to the provisions of the Act, Intervenor Indiana Telecommunications Association,<sup>2</sup> and the Office of Utility Consumer Counselor ("Public" or "OUCC") appeared and participated at the Prehearing Conference.

On September 11, 2006, the Presiding Officers issued a Docket Entry that granted a Petition for Leave to Intervene filed by Time-Warner Telecom of Indiana, L.P. ("TWTC"). On October 4, 2006, the Presiding Officers issued a Docket Entry to advise the parties that the caption in this matter had been modified to more clearly identify "all telecommunications service providers, including intrastate wireless carriers, in the state of Indiana" as Respondents in this proceeding.

Pursuant to proper notice of hearing, published as required by law, proof of which was incorporated into the record by reference, the Commission convened an Evidentiary Hearing in this Cause on May 15, 2007, at 9:30 a.m., EDT, in Conference Center 32 of the Indiana Government Center South, Indianapolis, Indiana. The OUCC, AT&T, the ITA, Cellco Partnership, d/b/a Verizon Wireless, TWTC, Sprintcom, Inc. and WirelessCo., LP d/b/a Sprint PCS and NPCR, Inc. d/b/a Nextel Partners ("Sprint/Nextel") appeared and were duly represented by counsel. The parties waived cross-examination of witnesses and offered their verified prefiled testimony into the record without objection.

The Commission, having considered the complete record as well as relevant law, and being duly advised in the premises, now finds as follows:

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<sup>2</sup> On August 14, 2006 the Indiana Telecommunications Association filed a Petition to Intervene in this matter which was granted by the Presiding Officers at the Prehearing Conference.

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the public hearing in this Cause was given and published by the Commission as provided for by Indiana law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. With the exception of the OUCC, which is a party pursuant to Indiana Code § 8-1-1.1, all Respondents in this Cause either are, or represent, public utilities as that term is defined in Ind. Code § 8-1-2-1(a). Moreover, pursuant to Indiana Code § 8-1-36-8(b), funding for the costs of the ILAP are to be determined by the Commission, after notice and hearing. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Cause.

2. **Evidence Presented in this Cause.**

A. **Direct Testimony.** The ITA, TWTC and the OUCC sponsored witnesses who submitted testimony in this proceeding. Only the ITA and the OUCC submitted direct testimony.

**Mr. Gary S. Baki-** Gary Baki testified on behalf of Intervenor ITA. Mr. Baki indicated that he is currently employed by Embarq Management Company as a Business Relations Manager for Ohio and Indiana. As part of his responsibilities, Mr. Baki is the Docket Manager for Indiana regulatory matters related to its affiliate company, United Telephone Company of Indiana Inc. d/b/a Embarq ("Embarq"). Mr. Baki testified that Embarq is a long-standing member of the ITA whose membership, in part, includes 40 incumbent local exchange carriers ("ILECs") that provide telecommunications services to end users in Indiana representing approximately 3.2 million access lines. ITA Exhibit 1.

Mr. Baki indicated that he participated in the series of Technical Workshops which the Commission conducted in the fall of 2006 as part of the ITA industry team ("Industry Team") which consists of representatives from Embarq, AT&T, Verizon and the Indiana Exchange Carrier Association ("INECA"). According to Mr. Baki, the Industry Team developed a proposal to address funding for the costs of the ILAP along with recommendations for the Commission's consideration regarding the implementation of the ILAP under IC 8-1-36. In his testimony, Mr. Baki describes the Industry Team's recommendations for funding the ILAP and explains the features of that plan. *Id.* The Industry Team's ILAP proposal ("Proposal") is attached to Mr. Baki's direct testimony as Exhibit "A."<sup>3</sup> Mr. Baki testified that the Proposal addresses four main components for the implementation of the ILAP: (1) the scope of the ILAP; (2) the funding mechanism for the ILAP; (3) the administration of the ILAP; and (4) the outreach provisions of the ILAP.

With respect to the scope of the ILAP, Mr. Baki testified that in his view, Indiana Code § 8-1-36, preserves the federal Lifeline program while supplementing it by expanding the income-based eligibility for Indiana consumers to a range between 136% and 150% of the federal poverty guidelines. Mr. Baki noted that it appears that basic telecommunication service ("BTS") and non-BTS customers would be eligible to participate in the ILAP. Moreover, according to Mr. Baki, since the federal program remains intact, Indiana consumers that

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<sup>3</sup> This Proposal is entitled in Mr. Baki's direct testimony "Indiana Lifeline Assistance Program ("ILAP") (Strawman Proposal)." For ease of reference, the Proposal is attached to this Order as "Exhibit 1" and made a part hereof.

receive federal Lifeline support would not forfeit any current benefits. Mr. Baki added that, while the Proposal provides enough structure to calculate an estimated cost of the ILAP, which is an essential purpose of this proceeding, it does not address every detail of the program.

With respect to the funding mechanism for the ILAP, Mr. Baki indicated that the Proposal contemplates a pass-through percentage surcharge on end users' monthly billings, based upon a monthly assessment imposed by the ILAP administrator. Mr. Baki testified that the mechanism in the Proposal is virtually identical to the one approved by the Commission for funding of the Indiana Universal Service Fund ("IUSF") established in Cause No. 42144.<sup>4</sup> Mr. Baki also testified that Indiana Code 8-1-36-10 allows ETCs to seek "Tier Three" federal Lifeline support in connection with universal service support provided by an ETC. FCC regulations provide additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by an ETC, up to a maximum of \$1.75 per month.<sup>5</sup> Mr. Baki testified that the Proposal recommends that Indiana Lifeline support be set at \$1.00 per month per participant. This amount, combined with the federal matching support of one-half of the state discount, would result in an additional Lifeline discount of \$1.50 to qualified customers. Mr. Baki indicated that this approach would ensure that the fund is not overburdened at the outset through the implementation of a gradual approach to additional Lifeline support in the State.

Mr. Baki testified that under the Proposal all telecommunications carriers that provide intrastate retail telecommunications services would contribute to support of the ILAP to ensure that the ILAP is funded on a competitively neutral basis as mandated by Section 254(f) of TA-96.<sup>6</sup> Mr. Baki stated that this contribution requirement comports with the requirement in the ILAP statute that specifies that funding be done in a manner based on, and consistent with, comparable funding mechanisms for the federal Lifeline program. The Proposal reflects an estimated cost of \$715,000 as the initial projected funding requirement for the proposed \$1 state Lifeline discount.

The Proposal also contemplates the possible unified administration of the ILAP and the IUSF established in Cause No. 42144. Mr. Baki testified that the Industry Team believes that utilization of a shared third-party administrator would contribute to the efficiency of the administration of the programs as it would allow for cost-effective management of the funds in each program. The Proposal estimates that administrator expenses and ETC administration expenses, as provided for by IC 8-1-36-8(b)(1), will be approximately \$100,000 and \$362,000, respectively. Mr. Baki stated that this cost estimate is based on field experiences of programs in other states and the amount falls roughly in the middle of actual expenditures from these

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<sup>4</sup> The Proposal (Part II.B) provides for this percentage surcharge to be derived by utilizing the projected amount necessary to fund the ILAP as the numerator, and the total Indiana net intrastate retail telecommunications revenues as the denominator. That surcharge is then multiplied by the amount of each non-Lifeline end user's monthly bill for retail intrastate telecommunications services to determine each carrier's monthly contribution assessment.

<sup>5</sup> 47 C.F.R. § 54.403(a)(3) of the FCC's regulations addresses such "Tier Three" additional federal Lifeline support. While this federal regulation does not require state-mandated reductions in order for an ETC to obtain such support, nonetheless an ETC must reduce their rates for Lifeline service further under the Indiana program up to an additional \$3.50 to avail themselves of up to an additional \$1.75 of Tier Three support.

<sup>6</sup> 47 U.S.C. §254(f) of TA-96 provides, in part, that "(e)very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and non-discriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State."

jurisdictions. Projected ETC administration expenses were derived from the costs that AT&T, Verizon and Embarq incurred in 2006 to administer their respective Indiana Lifeline programs. Mr. Baki stressed that the expense estimate represents the best efforts of the Industry Team to identify the bulk of these expenses and will change as additional expenses become known and identified for all ETCs.

The final component of the Proposal addresses the outreach provisions of the ILAP.<sup>7</sup> Mr. Baki testified that the Proposal outlines, from a take rate-perspective as well as from a cost perspective, what is viewed as the most effective approach to outreach initiatives. (Para. IV, Proposal) Under the terms of the Proposal, responsibility would be shared between the ETCs and the Commission, by capitalizing on the ETCs' familiarity with their respective service territories and the Commission's ability to concurrently engage in a statewide effort to send a consistent message as to the ILAP's availability to all of Indiana's prospective Lifeline subscribers. The Proposal estimates an initial annual outreach budget for the ILAP of \$300,000. This number is based upon a comparison to the state of Ohio which uses \$.10 per ILEC residential end user line per year to fund outreach expenses. Mr. Baki, however, also testified that the estimate is based on approximately 3,000,000 ETC landline residential end users in Indiana and does not account for the number of ETC wireless residential end user lines. With respect to the budget distribution, the Proposal recommends 50% for the use of ETCs and 50% for the Commission statewide.

In summary, under the Proposal as discussed in Mr. Baki's testimony, the initial funding requirements projected for the ILAP would be as follows:

(a)	Foregone revenue from the \$1.00 Lifeline Discount	\$ 715,000
(b)	Administrator expenses	\$ 100,000
(c)	ETC administration expenses	\$ 362,000
(d)	Outreach	\$ <u>300,000</u>
<b>TOTAL INITIAL FUNDING REQUIREMENT</b>		<b>\$1,477,000</b>

Based on these projections, Mr. Baki estimated that the consumer monthly surcharge to support the ILAP would average approximately \$.041 per end user per month ( $1,477,000/3,000,000 \div \text{by } 12$ ), or about \$.50 per end user per year. Mr. Baki indicated that this estimated monthly surcharge will be lower when the end users of other types of carriers that support the ILAP are ultimately included in the calculation. However, based on supplemental information submitted in response questions presented in a Docket Entry issued in this matter, Mr. Baki subsequently revised this initial calculation. According to Mr. Baki, based on this updated information, the customer monthly surcharge to support the ILAP would average approximately \$.017 per end user per month, or \$.21 per end user per year, or almost 60% less than his initial estimate.

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<sup>7</sup> 47 C.F.R. §54.405(b) of the FCC's regulations requires that all ETCs: "(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." This activity is referred to as "outreach".

**Mr. Ronald L. Keen-** Mr. Ronald L. Keen, Director of the OUCC's Telecommunications Division, provided an overview and analysis of the Industry Group's Proposal including a review of the proposed ILAP discount and the availability of additional matching funds from the federal Universal Service Lifeline Assistance Program. Mr. Keen also addressed the Industry Group's estimate of total program costs, the proposed funding mechanism, and the plan for fund administration and outreach efforts under the Proposal.

Mr. Keen testified that, consistent with the requirements set forth in the ILAP statute that prohibit the disconnection of an Indiana Lifeline customer's primary access line due to nonpayment for other services, the Proposal would permit Indiana Lifeline and Link-Up customers to continue to purchase Non-Basic Telephone Services ("Non-BTS").

Mr. Keen testified that he supports the Proposal's expansion of current Lifeline discounts by adding a new, cumulative state-funded discount that will trigger additional federal USF "Tier 3" matching funds, as this will enable Indiana's ETCs to offer greater discounts to eligible consumers. Mr. Keen explained that under the Industry Group's Proposal, the new ILAP discount of \$1.00 per month would trigger an additional \$0.50 in Tier 3 federal matching support. Therefore, the additional, cumulative Lifeline discount would be \$1.50 per month under the Industry Group's Proposal. Mr. Keen noted that the maximum available Tier 3 federal matching support is one-half of the total state-funded monthly discount, or \$1.75 per month – whichever is lower. To obtain the full \$1.75 in additional Tier Three federal matching funds, Indiana's ILAP would have to provide a monthly discount of \$3.50, increasing current Lifeline discounts by an additional \$5.25 per month.

While Mr. Keen indicated that the OUCC would like to see Indiana ultimately take advantage of additional federal matching funds, he testified that the OUCC does not oppose the Industry Group's Proposal that initially implements a smaller state-funded discount. In reaching this conclusion, Mr. Keen recognized that the Proposal appears to be designed to help stabilize initial program costs and result in a lower initial end user surcharge. Mr. Keen noted that under the Proposal, the Commission would have the ability to approve subsequent changes in ILAP discounts and funding levels as warranted in the future. Mr. Keen specifically referenced the initial Oversight Committee review scheduled to occur eighteen (18) months following implementation of the ILAP program. Consistent with the terms set forth in the Proposal, members of the Oversight Committee (including the OUCC) will have the ability to communicate recommendations or provide other information to the Commission regarding the efficient administration and operation of the ILAP fund.

With respect to program cost recovery issues Mr. Keen explained that the Proposal provides for the recovery of reasonable program administration and outreach costs. Under the Proposal, ETCs would be reimbursed for lost revenues resulting from the increased monthly Lifeline discount amount (excluding the Tier 3 federally-funded portion of the increased Lifeline discount). Mr. Keen testified that while the exact dollar amount required to cover ILAP-related expenses is not presently known, he believes the Proposal reflects a reasonable, albeit rough, estimate of those costs which should be significantly lower when wireless customers are considered. In reaching this conclusion, Mr. Keen recognized that it may take some time to fully implement the new Indiana ILAP and that the Commission will be in a better position to estimate total funding needs after more definite cost projections and actual cost data become available.

Mr. Keen also testified regarding the ILAP statute's requirement that Indiana's Lifeline funding mechanism mirror the federal Universal Service funding mechanism. Mr. Keen indicated that the Proposal appears to satisfy this requirement as it would require all Indiana carriers that provide intrastate retail telecommunication services to contribute toward ILAP funding in a competitively neutral manner. Under the Proposal, individual carrier assessments would be based on a percentage of total intrastate retail revenue, much like the funding mechanism approved by the Commission in Cause No. 42144. Mr. Keen pointed out that the Industry Group's Proposal would allow carriers to recover all ILAP assessments, as well as program administration and outreach expenses, from retail customers through a new line-item surcharge on end user bills. With respect to the recommendation contained in the Proposal to utilize a single fund administrator, Mr. Keen agreed that it would make sense to use a single administrator for both the ILAP and the IUSF as it should help to reduce overall administrative costs.

Mr. Keen indicated that the Industry Group's program cost estimates were based on actual experience gained in other parts of the country adjusted to take state-specific variations into account. Mr. Keen supported the Industry Group's proposed use of a competitive bidding process to identify the best available administrator for the ILAP program. Under a competitive bidding process, all entities interested in applying for the position could do so and would be on equal footing in the selection process. Mr. Keen also supported the Industry Group's recommendation to utilize an "Indiana-First" approach to the bid selection process.

Mr. Keen testified that while the Industry Group's outreach plan is modest it constitutes a reasonable starting point. Mr. Keen noted that the Proposal provides outreach expense reimbursements for Indiana ETCs, but caps annual recovery at \$0.10 per residential end user line, with some additional allowance for small ETCs. While Mr. Keen generally supported the Industry Group's efforts to keep outreach program costs down, he recommended that the \$0.10 reimbursement cap in the Proposal be reviewed in future years, when decisions on whether to increase, decrease or leave the cap at current levels can be based on an analysis of the cost and effectiveness of actual outreach efforts, as measured against future Indiana residential telephone penetration rates and Lifeline/Link-Up take rates.

Mr. Keen indicated that he would like to see Indiana ETCs continue outreach efforts already widely used to promote the Lifeline and Linkup assistance programs in Indiana, such as billing inserts; information on Lifeline/Linkup in the informational pages of local telephone directories; and, periodic training of customer service representatives to ensure familiarity with all aspects of these programs including familiarity with specific situations in which it is appropriate and important to offer information to existing or prospective customers about available assistance for income-eligible households. Mr. Keen also recommended that Indiana ETCs prominently post information on Lifeline/Link-Up assistance programs on their respective websites.

In conclusion, Mr. Keen testified that he believes that the Proposal constitutes a good starting point for a future rulemaking proceeding; noting that, by statute, the Commission must

adopt rules establishing the ILAP program by July 1, 2008, to take effect no later than July 1, 2009.

**B. Responsive Testimony.** TWTC submitted the responsive testimony of Ms. Pamela Sherwood, Vice President of Regulatory Affairs for the Midwest Region for Time Warner Telecom ("TWTC").

**Ms. Pamela Sherwood-** Ms. Sherwood offered her perspective on the ILAP funding recommendations outlined in Mr. Baki's testimony and noted that TWTC was not a part of the Industry Group that created the Proposal. According to Ms. Sherwood, TWTC's main concerns are that: a) the Proposal does not adequately address the need for a clear definition of contributors; and b) it does not ensure that companies providing similar services will contribute to the fund on a nondiscriminatory basis regardless of technology or platform.

Ms. Sherwood testified that the Proposal lacks definitions that she believes are necessary to provide the level of specificity and clarity that has developed, over time, from FCC rules and orders implementing the USF and Lifeline Programs. Ms. Sherwood noted that while the FCC requires all telecommunications companies that provide interstate telecommunications service to contribute to the federal Universal Service Fund, the FCC has clarified that those companies include wire line phone companies, wireless phone companies, paging service companies, and interconnected Voice over Internet Protocol (VoIP) service providers. Ms. Sherwood testified that the Proposal is unclear as to whether wireless phone companies, paging service companies, and interconnected VoIP providers must contribute on a competitively neutral basis.

Ms. Sherwood further noted that the Proposal indicates that the pool of ILAP contributors shall include "all telecommunications carriers providing intrastate retail telecommunications services to customers in Indiana." But, Ms. Sherwood noted that the definition section of HEA 1279, explicitly permits the Commission to establish and administer the Indiana Lifeline assistance program, does not use the term "telecommunications carrier." Instead, Ms. Sherwood noted that IC 8-1-2.6-13 specifically uses the term "communications service provider"- meaning a person or entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service." Ms. Sherwood testified that while the Proposal indicates that entities are required to contribute on a "competitively neutral basis," there is nothing in the Proposal that ensures that entities that provide substantially similar services, regardless of technology, contribute to the ILAP on a competitively neutral basis.

With respect to ongoing oversight of the pool of mandatory contributors, Ms. Sherwood noted that there is significant regulatory activity in the federal arena associated with reforming intercarrier compensation and the federal USF (including Lifeline) system. She noted that debate is ongoing about the manner in which entities should be assessed, which could impact both the Indiana USF and the ILAP and that while the rules implementing the ILAP are required to be implemented by July 1, 2009, there could be substantial changes at the federal level before then. Ms. Sherwood observed that it may be wise to continue with this proceeding and the associated rulemaking to meet the statutorily imposed deadlines, while leaving flexibility in the process and the rules to allow for subsequent revisions that may be necessary.



Ms. Sherwood testified that she believes that TWTC's proposal helps to promote an ILAP contribution system that is competitively neutral, non-discriminatory, and consistent with the federal Lifeline contribution requirements. Ms. Sherwood indicated that if the language in the Industry Group's Proposal is not clarified and defined, the resulting uncertainty will create opportunities for entities to claim that they are not "telecommunications carriers providing intrastate retail telecommunications services," and are therefore exempt from contributing. This could burden the ILAP and those carriers who contribute – and their customers to whom the surcharge is passed through – who may pay more than their fair share to support the ILAP. She also noted that absent such clarification, the contribution to the ILAP will be discriminatory since carriers that provide substantially similar services – such as VoIP providers and traditional land line carriers – will not be assessed the same social obligations/surcharges, and customers will be paying different amounts for service on this basis.

**C. Reply Testimony.** The ITA submitted Reply Testimony of its witness, Gary S. Baki, commenting upon various matters raised in the responsive testimony of TWTC witness, Pamela Sherwood.

**Mr. Gary S. Baki-** Mr. Baki testified that he did not agree with Ms. Sherwood assertion that the Proposal does not contain a clear definition as to who must contribute to the ILAP fund, or her contention that the Proposal does not ensure that companies providing similar services will contribute to the fund on a non-discriminatory basis regardless of technology or platform.

With respect to the definitions contained in the Proposal, Mr. Baki indicated that paragraph II.B.1. of the Proposal addresses who must fund the ILAP.<sup>8</sup> Mr. Baki observed that such funding must be accomplished under the Proposal on a "competitively neutral" basis as required by federal law. Mr. Baki testified that the terms "telecommunications carrier" and "intrastate telecommunications services" set forth in the Proposal are consistent with the language employed in § 254(f) of TA-96, pertaining to a state's authority to establish regulations for the advancement of universal service, as is the case with the Indiana Lifeline Assistance Program.<sup>9</sup> Mr. Baki reiterated that the Proposal's funding mechanism is virtually identical to the one approved by the Commission for funding the IUSF established in Cause No. 42144. Thus, Mr. Baki concluded that the Proposal's language is not vague or unclear.

In response to TWTC's second contention, Mr. Baki testified that the Proposal's use of the term "competitively neutral" carries with it a very specific meaning based upon prior Commission decisions. In 1998, the Commission's investigation into universal service reform in Cause No. 40785 adopted the principle of "competitive neutrality" (including technological neutrality) that had been previously established by the FCC as an additional principle upon

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<sup>8</sup> Paragraph II.B.1. of the Proposal states:

"B. Funding Mechanism.

1. All telecommunications carriers providing intrastate retail telecommunications services to customers in Indiana shall contribute to the support of the ILAP fund on a competitively neutral basis as mandated by § 254(f) of TA-96."

<sup>9</sup> Section 254(f) of TA-96, addressing State Authority, provides, in part, that "(a) State may adopt regulations not inconsistent with the Commission's (i.e., FCC) rules to preserve and advance universal service." (Parenthetical added).

which to base policies for the preservation and advancement of universal services.<sup>10</sup> Mr. Baki stated that this prior Commission order requires nondiscriminatory treatment of each carrier, regardless of technology, in terms of providing universal service support.

Mr. Baki further indicated that he believes that the ILAP should not operate to unilaterally impose a contribution requirement on any telecommunications carrier before the nature and extent of its revenues are known. Because of that uncertainty, Mr. Baki testified that the Proposal does not attempt to list all specific types of telecommunications carriers that must contribute to support the ILAP, as the ground rules as to state regulation over various services may change in the future. Mr. Baki testified that the Proposal's language regarding the contributor base fosters the flexibility that TWTC recommends in the development of the ILAP.

Lastly, Mr. Baki disagrees with TWTC's assertion that "harm" will result if TWTC's concerns are not addressed and the Proposal is accepted in its present form. Mr. Baki asserts that TWTC's concerns are unfounded and premature. Mr. Baki points out that while the industry team seeks Commission endorsement of the Proposal's recommendations, the Proposal makes clear that the Industry Group anticipates that the Commission will utilize the rulemaking proceeding required by the statute to "refine" where necessary the approach to all issues involved in establishing an ILAP.

**3. Commission Analysis and Findings.** The Commission initiated this proceeding to establish funding requirements for the Indiana Lifeline Assistance Program as required by Indiana Code § 8-1-36, which directs us to not only determine and establish a funding mechanism for the costs of the ILAP, after notice and hearing, but also to adopt rules, no later than July 1, 2008 (to become effective no later than July 1, 2009), for the administration of this program.

For purposes of consideration of funding in this proceeding, as set forth in Ind. Code § 8-1-2-36-8(b), the Commission must determine funding for certain costs of the program, after notice and hearing, in a manner based on and consistent with comparable federal funding mechanisms for the federal Lifeline program. Consideration of the issues in this matter include the costs of reimbursing eligible telecommunications carriers for lost revenues associated with providing reduced charges for basic telecommunications service to participants; and, the reasonable expenses incurred by the Commission and eligible telecommunications carriers to administer the program and publicize the availability of the program in a manner reasonably designed to reach eligible customers. IC § 8-1-2-36-8(b).

Consistent with this statutory requirement, the Commission finds that the Proposal, attached to this Order as "Exhibit 1," provides suitable and appropriate recommendations for ILAP funding. The proposed funding mechanism contained in the Proposal is competitively neutral as required by federal law, and is virtually identical to the funding mechanism for the IUSF approved by the Commission in Cause No. 42144. In addition, under the terms of the Proposal, every telecommunications carrier would contribute to the ILAP based on their *intrastate* retail telecommunications services revenue. Accordingly, the ILAP funding

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<sup>10</sup> See, *Re Access Charge Reform and Universal Service Reform*, Cause No. 40785 (Ind. U.R.C. Sept. 16, 1998), at 11-12, n.3.

mechanism would be based on, and consistent with, the comparable funding mechanisms for the federal Lifeline program as required by Ind. Code § 8-1-36-8(b). Moreover, the provisions of the Proposal that would implement a pass-through percentage surcharge on consumers' monthly billings in support of the ILAP is consistent with the support methodology approved for the IUSF in Cause No. 42144. Therefore, the Proposal outlines a consistent and uniform approach to the statutory goal of maintaining universal telephone service in Indiana.<sup>11</sup>

While TWTC expressed concern in its testimony that the Proposal does not contain a "clear definition" of contributors to the ILAP, and does not ensure that companies providing similar services will be required to contribute to the fund on a nondiscriminatory basis regardless of technology or platform, we disagree. Paragraph II.B.1. of the Proposal addresses funding of the ILAP in a manner consistent with IC § 8-1-36(b) as it provides that all intrastate retail telecommunications carriers providing intrastate retail telecommunications services must contribute on a competitively-neutral basis as required by federal law. This requirement is consistent with the language employed in Section 254(f) of TA-96 regarding a State's authority to establish its own regulations for the preservation and advancement of universal service and to require every telecommunications carrier that provides intrastate telecommunications services to contribute "on an equitable and non-discriminatory basis in support of that State's regulations.

Furthermore, while the Proposal does not attempt to list all specific types of telecommunications carriers that should contribute to support the ILAP, the Commission recognizes that the Proposal's funding mechanism is virtually identical to the one approved for purposes of funding the Indiana Universal Service Fund in Cause No. 42144, and should provide the necessary flexibility to allow the Commission to make future requisite changes to both the contribution mechanism and contribution base of the ILAP. Therefore, we find that the Proposal contains sufficient specificity and clarity as to which companies are expected to support the ILAP fund. Secondly, because the Proposal provides for contributions in support of the ILAP on a competitively neutral basis, it ensures that each carrier is treated equally and on a non-discriminatory basis, regardless of technology. We therefore find that the Proposal requires non-discriminatory treatment of each carrier, regardless of technology, in terms of providing universal service support.

With respect to the Proposal's funding mechanism for the ILAP, the Commission also finds that it reasonably accounts for all costs associated with the ILAP's operation and provides a reasonable estimation of those costs including: (1) reimbursement of ETCs for lost revenues resulting from further reduced charges for Lifeline support of \$1.00 per month per participant (sufficient to trigger additional Tier Three federal Lifeline support in the initial sum of \$.50); (2) the recovery of ILAP administration expenses incurred; and (3) reimbursement of reasonable expenses for outreach efforts to publicize the availability of the ILAP. Accordingly, the Commission finds that the provisions in the Proposal for the initial funding of the ILAP are reasonable and appropriate and should be approved in this Cause.

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<sup>11</sup> The Commission's Final Order issued in Cause No. 42144 on March 17, 2004, is now in its implementation stages based upon recent directives from the Commission in that proceeding. See, Docket Entry, Cause No. 42144, April 20, 2007, setting a timetable for the establishment of the initial surcharge percentage for high cost funding in the IUSF as well as for the commencement of a request for a Proposal (RFP) process for the selection of a permanent administrator for the IUSF by the Oversight Committee.

With regard to funding the costs of administration of the ILAP, the Commission finds that the recommendation contained in the Proposal for unified administration of the ILAP, with the IUSF established in Cause No. 42144, could represent an efficient and cost-effective approach to successfully maintaining universal telephone service in Indiana. However in reaching this conclusion, the Commission recognizes that administration of the IUSF established in Cause No. 42144 is in its early stages of development and that attempted integration at this juncture may prove to be problematic. Therefore, the Commission finds that the recommendations regarding integration of the administrative requirements of the two interrelated funds set forth in the Proposal should not be adopted in this matter. In reaching this conclusion, the Commission recognizes that its denial of this request is due to timing rather than substance and that future integration of the funds could prove to be beneficial.


Finally, with respect to the funding requirements for outreach, the Commission finds that the recommendations in the Proposal regarding implementation of the ILAP and the initiation of outreach efforts by the Commission and Indiana ETCs are sufficiently reasonable to publicize the availability of the ILAP and reach eligible customers.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The funding recommendations for the establishment of Indiana Lifeline Assistance Program set forth in the Industry Group's Proposal, attached to this Order as "Exhibit 1," are hereby approved by the Commission consistent with the findings set forth herein.
2. Consistent with the specific findings set forth in this Order, the Oversight Committee, established in Cause No. 42144 and charged with the development of an RFP for the selection of a permanent administrator for the Indiana Universal Service Fund, shall include provisions in the RFP that require any potential administrator to oversee the eventual administration of the Indiana Lifeline Assistance Program as part of its duties and responsibilities.
3. Each Indiana ETC shall submit to the Commission the total current number of households being provided Lifeline/Link-Up service by that respective ETC within thirty (30) days following the issuance of this Order with updates on an annual basis thereafter.
4. This Order shall be effective on and after the date of its approval.

**GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:**  
**APPROVED: NOV 07 2007**

**I hereby certify that the above is a true and correct copy of the Order as approved.**



**Brenda A. Howe**  
**Secretary to the Commission**

**INDIANA LIFELINE ASSISTANCE PROGRAM ("ILAP")  
(STRAWMAN PROPOSAL)**

**I. SCOPE OF THE INDIANA LIFELINE ASSISTANCE PROGRAM**

A. ILAP's Interrelationship with the Federal Lifeline Program. The ILAP statute (I.C. 8-1-36) preserves the current federal Lifeline program, but supplements that program by allowing for additional Tier 3 federal Lifeline support as provided under 47 C.F.R. §54.403(a)(3).

B. Eligibility.

1. I.C. 8-1-36-9 sets forth the income-based and program-based eligibility criteria to receive Lifeline support, including an expansion of income-based eligibility for Indiana consumers between 136% and 150% of the federal poverty guidelines.
2. Lifeline benefits are available to eligible residential customers purchasing either Basic Telecommunications Service ("BTS") or non-BTS as these terms are defined in House Enrolled Act 1279 (P.L. 27-2006; IC 8-1-2.6-0.1 and – 0.3). All Lifeline support will be applied as a credit to each Lifeline participant's primary residential line. Each Lifeline participant is entitled to only one credit per billing period.<sup>1</sup>

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<sup>1</sup> In the case of a Lifeline participant subscribing to voice service from more than one ETC (e.g., wireline, wireless, VoIP), such participant must designate which service shall receive the credit.

- C. Toll Limitation. Toll limitation service should contain the same terms and conditions as provided under the federal Lifeline program. (I.C. 8-1-36-8(a)(1)).
- D. Disconnection of Lifeline Customers. ETCs may not disconnect a Lifeline customer's primary access line for non-payment of outstanding charges for any other service.
- E. Verification of Continued Eligibility. ETCs must verify continued eligibility annually under either the program-based or income-based eligibility criteria, consistent with federal Lifeline regulations, or such other procedures as may be established by Commission rulemaking.
- F. Dispute Resolution Procedures. ETCs shall comply with all dispute resolution procedures applicable to Lifeline service termination as may be established by Commission rulemaking.

## **II. FUNDING MECHANISM FOR THE ILAP**

- A. Scope of Funding. All costs associated with:
  - 1. Reimbursement of ETCs for lost revenues resulting from further reduced charges for Lifeline support (sufficient to trigger some level of additional Tier 3 federal Lifeline support);
  - 2. ILAP administration expenses incurred by the Commission, a third-party administrator and ETCs; and
  - 3. Outreach expenses to publicize the availability of ILAP are to be funded by the ILAP. (I.C. 8-1-36-8(b)).

B. Funding Mechanism.

1. All telecommunications carriers providing intrastate retail telecommunications services to customers in Indiana shall contribute to the support of the ILAP fund on a competitively neutral basis as mandated by Section 254(f) of TA-96.
2. ILAP assessments shall be imposed on all telecommunications carriers who provide intrastate retail telecommunications service to customers in Indiana and receive revenues therefrom. The ILAP assessment shall be annually developed as a percentage surcharge by projecting the total amount necessary to fund the ILAP for the ensuing 12 months, divided by the prior calendar year's total Indiana net intrastate retail telecommunications revenue ("net revenue"). Net revenue equates to intrastate retail telecommunications service billings less uncollectibles. An adjustment factor shall be permitted in the surcharge calculation to account for material changes in the net revenue. The Oversight Committee established in Cause No. 42144 shall determine the methodology for making such adjustments.
3. Each carrier's assessment shall be passed through as a monthly percentage surcharge to the end user customers of such carrier who are not Lifeline participants. That

assessment shall be equal to the product of this surcharge percentage multiplied by the amount of the end user's monthly bill for intrastate retail telecommunications services, excluding applicable taxes and other regulatory fees. Each telecommunications carrier will remit its ILAP surcharges collected each month to the ILAP administrator. Such carrier assessments may be modified by the administrator of the ILAP upon the approval of the Commission up to twice per calendar year as may be necessary in order to maintain sufficient funds required for disbursements to ETCs and for payment of ILAP expenses.

4. Each telecommunications carrier shall commence the issuance of the end user surcharges<sup>2</sup> on its customers' bills sixty (60) days in advance of the implementation date of the ILAP approved by the Commission in order to establish a sufficient balance in the ILAP fund for the payment of the initial start-up costs for the administration and operation of the ILAP as set forth in Paragraph II.A. above. The ILAP's implementation date shall be established by the Commission rules adopted pursuant to I.C. 8-1-36-8.
5. The administrator of the ILAP may avail itself of any existing administrative and/or legal remedies to enforce the

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<sup>2</sup> The Commission, by an Order or Docket Entry in Cause No. 43082, shall establish the initial end user charge to be collected by each carrier.



remittance obligations of all telecommunications carriers  
required to support the ILAP fund.

C. Tier 3 Federal Lifeline Support.

1. The initial level of reduced charges for Indiana Lifeline support (sufficient to trigger Tier 3 federal Lifeline support) shall be One Dollar (\$1.00) per Lifeline service participant. This reduction will result in an additional discount of One Dollar Fifty Cents (\$1.50) to Lifeline customers when combined with the fifty percent (50%) federal matching support.
2. This further discount for Lifeline support is estimated to cost approximately \$715,000 at the time of the initiation of the ILAP, based upon current statewide Lifeline enrollment figures. (59,569 lines x \$1.00 x 12 months = \$715,000.) This estimated cost applies solely to the initial year of the ILAP and does not reflect growth in the number of eligible Lifeline service participants during either the initial or subsequent years. Additional Lifeline support requirements shall be funded as provided for under Paragraph II.B.3 above.
3. The take-rate results for Lifeline service enrollment shall be evaluated by the Oversight Committee 18 months after the implementation date of the ILAP to ensure that the processes, funding levels, size, and the operation and administration of

the ILAP remain adequate and sufficient. Subsequent similar reviews shall be conducted on a biennial basis by the Oversight Committee. Notwithstanding the foregoing, the Oversight Committee, or any member thereof with advance written notice to the other members of that committee, may provide at any time recommendations or any other information as to the ILAP's operation to the Commission as deemed appropriate and necessary for the efficient administration and operation of the ILAP fund.

### **III. ADMINISTRATION**

A. Unified Administration. Cause Nos. 42144 (Indiana Universal Service Fund – "IUSF") and 43082 (addressing the funding of ILAP) are interrelated to the extent that their respective goals are to fulfill the Commission's ongoing statutory goal of maintaining universal telephone service in Indiana. Accordingly, to promote and advance regulatory efficiency in meeting this goal, the administration of the IUSF and the ILAP fund should be managed by the same, neutral third-party administrator.

1. This administrator should be selected by the Commission through a Request for Proposal ("RFP") process acceptable to the Commission consistent with the terms and conditions of the Settlement Agreement approved by the Commission in

Cause No. 42144 if the Commission decides not to self-administer the ILAP.

2. The ILAP administrator should be compensated on a monthly basis for the costs/expenses it incurs in fulfilling its responsibilities from the amounts assessed and collected for the operation of the ILAP. The estimated annual administration expenses for the ILAP (including report/audit fees) are \$100,000, which is based upon the actual field experiences of comparable state programs with an administrator that was selected through a competitive bidding process for performance of similar duties and responsibilities. Notwithstanding this estimate, the actual administration expense will be based on those bids received and what bid is ultimately selected.
3. The projected annual expenses of ETCs for administering the ILAP are estimated to be approximately \$362,000 or an initial ETC administration budget expense of \$.11 per ETC end user access line per year. This estimate is based upon expenses incurred by AT&T Indiana, Embarq and Verizon for ETC administration in Indiana during 2006.
4. For purposes of the ILAP, the ongoing duties and responsibilities of the administrator and ETCs include, but

are not necessarily limited to, those items enumerated and attached hereto as Attachments 1 and 2, respectively.

B. Other Administrative Requirements.

1. The administrator may not require carrier payments to the ILAP in excess of those authorized by the Commission. Any earnings realized from monies collected from carriers shall be used to reduce subsequent ILAP assessments.
2. Financial records of the administrator with regard to the operation of the ILAP, shall be made available to the Commission upon request and should be subject to an audit on an annual basis by an independent accounting firm acceptable to the Commission.
3. Furthermore, the financial records of any telecommunications carrier with regard to its funding obligations for the ILAP, as well as any ETC with regard to its reimbursement costs for lost revenues associated with reduced charges for Indiana Lifeline support as well as administration and outreach expenses incurred for the ILAP shall be made available to the Commission upon the Commission's request and subject to audit as may be determined reasonable, expedient and necessary by the Commission. Appropriate confidentiality protection will be accorded to each carrier for the submission of any competitively sensitive data. In the event a dispute

arises over the claimed expenses of a telecommunications carrier, a participating party may obtain access to relevant documents pursuant to an appropriate non-disclosure agreement between such party and the carrier.

4. The administrator shall report to the Commission, the Oversight Committee and the OUCC not less frequently than annually all of the receipts and disbursements from the ILAP fund that it has administered. This report should show the total amount of funds collected from each telecommunications carrier, any earnings realized from monies collected from carriers, and the total funds disbursed on a monthly basis to each ETC during that calendar year. All reports shall be filed by the administrator in accordance with the Commission's current confidentiality requirements.

#### IV. OUTREACH

##### A. Joint Role of Commission and ETCs.

1. Upon the implementation of the ILAP, both the Commission and Indiana ETCs shall initiate outreach initiatives sufficiently reasonable to publicize the availability of the ILAP and reasonably designed to reach eligible customers. (I.C. 8-1-36-8(b)(2)).
2. To the extent reasonable and feasible, outreach initiatives should include coordination with relevant state agencies to

disseminate ILAP information and applications for Lifeline support.

B. Outreach Initiatives and Expenses.

1. Each ETC shall initiate outreach methods it deems most appropriate and reasonable for its customers, based upon the demographics of its respective service areas, subject to the continuing oversight of the Commission. These initiatives should be implemented, taking into consideration the outreach guidelines established by the FCC (i.e., outreach materials and methods designed to reach households without telephone service; advertising that can be read or accessed by the non-English speaking population within each ETC's service area; and outreach efforts with those governmental agencies administering relevant government assistance programs).

Copies of each ETC's outreach collateral must be submitted to the administrator along with its claim for reimbursement. A copy of such collateral shall also be concurrently submitted to the OUCC for their review. Outreach disbursements may be denied to an ETC if such collateral does not promote the availability of Lifeline/LinkUp programs.

2. The initial ILAP outreach budget expense will be established at the rate of \$.10 per ETC residential end user line per year.

This budget expense is based upon outreach experiences within the state of Ohio.

3. That assessment is calculated to provide an estimated annual outreach expense budget of \$300,000. (This estimate does not account for the number of ETC wireless residential end user lines.)
4. Fifty percent of the monthly outreach assessments received by the administrator will be allocated to providing support for all Commission and statewide level outreach initiatives. The remaining 50% of these assessments will be distributed to Indiana ETCs on a pro rata basis determined by a fraction (the numerator of which is the total number of residential end user lines of a specific ETC and the denominator of which is the current statewide number of ETC residential end user lines) multiplied by the allocated monthly outreach assessments. Notwithstanding the foregoing pro rata distribution formula, each Indiana ETC shall receive from the administrator a minimum of \$100 per year for use in its outreach initiatives regardless of the number of such ETC's respective residential end user lines.
5. The outreach results for Lifeline service shall be evaluated by the Oversight Committee 18 months after the implementation date of the ILAP to ensure that the

processes, funding level, and size of this initiative remain reasonably adequate and sufficient to publicize the availability of the ILAP. Subsequent similar reviews shall be conducted on a biennial basis by the Oversight Committee.



**ATTACHMENT 1**

**DUTIES OF THE ADMINISTRATOR FOR THE  
INDIANA LIFELINE ASSISTANCE PROGRAM**

The Administrator of the Indiana Lifeline Assistance Program ("ILAP") shall:

- a) Manage the daily operations and affairs of the ILAP in an efficient, fair, and competitively neutral manner;
- b) Calculate and collect the proper ILAP contribution assessment amount from every intrastate retail telecommunications carrier operating in Indiana;
- c) Ensure that required contributions to the ILAP are timely received from each carrier and that such funds are promptly deposited in the ILAP fund.
- d) Disburse the proper Lifeline support amounts ensuring that only qualified ETCs receive ILAP funds;
- e) Perform any periodic audits of the ILAP deemed necessary by the Administrator and/or the Commission regarding any operations of the ILAP;
- f) Report not less frequently than annually to the Commission, the Oversight Committee, and Office of Utility Consumer Counselor as to all receipts and disbursements made from the ILAP fund that it has administered;
- g) Notify the Commission of any carriers that are in violation of any requirements to support the ILAP fund;
- h) Compute the anticipated annual funding requirements and administrative costs of the ILAP, including reasonable outreach expenses and account for earnings realized on monies collected from providers;
- i) Establish a reserve for such contingencies as late payments and uncollectibles as deemed appropriate by the Commission;
- j) Provide any and all information necessary to support external audits of the ILAP;
- k) Resolve informal assessment disputes with any carrier;
- l) Maintain complete and thorough records of all costs directly and reasonably associated with the operation of the ILAP;
- m) Establish an appropriate true-up methodology for the ILAP assessment;

- n) Maintain and protect the confidentiality of any proprietary information reported to the Commission in conjunction with the operation of the ILAP;
- o) Perform any other duties as required by law or as may be ordered by the Commission;
- p) Maintain a sufficient surety bond in such amount as required by the RFP process to guarantee the faithful performance of the duties of the Administrator with regard to the management and operations of the ILAP; and
- q) Provide any and all information to the Oversight Committee reasonably necessary for such Committee to meet its responsibility of ensuring that the processes, funding levels, size, and administration/operation of the ILAP remain adequate and efficient.

**ATTACHMENT 2**

**ETC RESPONSIBILITIES UNDER THE  
INDIANA LIFELINE ASSISTANCE PROGRAM**

Each Eligible Telecommunications Carrier ("ETC") shall perform the following responsibilities with regard to the Indiana Lifeline Assistance Program ("ILAP"):

- a) Handle all Lifeline ("LL") and LinkUp ("LU") customer calls (English and Spanish speaking operators);
- b) Process all mailed LL/LU applications;
- c) Verify customer qualifications for LL/LU;
- d) Prepare internal reports as to ETC activity;
- e) Prepare LL/LU customer correspondence;
- f) Send fulfillment letters to qualifying LL/LU customers;
- g) File requisite reports with the FCC and such other reports with the Commission as may be required;
- h) Perform annual mailing or alternative acceptable process regarding verification of continuing LL/LU customer eligibility;
- i) Conduct reasonable outreach efforts;
- j) Participate in audits;
- k) Work with third-party ILAP administrator; and
- l) Maintain up-to-date website (or surrogate link) to publicize availability of LL/LU services.

Fulfillment of one or more of these responsibilities may be effected by an ETC through a contracted third party, depending upon individual needs and circumstances.